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In fact, a very similar rejection based on the same misunderstanding about "thin gain region" was presented previously in the Final Office Action of 11/06/2000 in the original parent application. And later the rejection and the finality were released in the Office Action of 03/26/2001, in view of the petitioner's reply of 01/03/2001, particularly in the section 2 of the reply. The relevant description has been presented in page 2 of petitioner's reply of 09/29/2008. In addition, all claims in the original parent application were allowed and a patent was issued.

Second, furthermore, under MPEP § 710.06, page 700-168, "Situations When Reply Period Is Reset or Restarted [R-6]", it is mentioned that "If the error is brought to the attention of the Office within the period for reply set in the Office action but more than 1 month after the date of the Office action, the Office will set a new period for reply, if requested to do so by the applicant, to substantially equal the time remaining in the reply period."

Considering that in the reply of 10/13/2009 petitioner indicated that the Final OA should not have been made final, because of the erroneous citation of reference, the Office should have at least reset a new period for reply.

Third, the failure to respond in a timely manner is caused by the process delay from PTO, rather than petitioner. The Advisory Action was dated and mailed on January 22, 2010, which is already after the expiration of the period for reply which expired on 15 January 2010. The reason for such a big lag is due to that it almost took three months for LIE to forward data to the examiner, other than 1 or 2 weeks commonly. In fact, petitioner called PTO and the examiner again and again for this matter during that period of time.

Finally, in the Advisory Action of 01/22/2010, petitioner has been advised to file an amendment with all the claims (1-15) and follow the guidelines of 37 CFR 1.173. He has done that in his last reply of 02/16/2010 and believed that all claims are in condition for allowance.

Thus, applicant brought to the Office's attention that the citation of reference was erroneous, and the Office should have reset the time period for reply under MPEP § 710.06, but did not. The PTO's mistake led to the abandonment of the application. The abandonment was unavoidable. Applicant hereby respectfully petitions the Commissioner to withdraw holding of abandonment.

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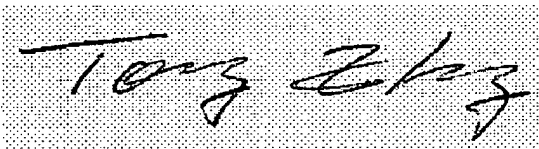
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In addition, in the original parent application, the PTO's mistake led to a delay in the examination process around 2.5 years. Now at this time the almost same mistake has been repeated again, resulted in another 2 years delay.

Respectfully submitted,



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[Note]

This petition was faxed to PTO at 571-273-8300 for three times previously on 3/15/2010, on 3/22/2010 and on 3/26/2010. However, in the Image File Wrapper of PAIR of 10/820,561, the first two fax documents of this petition are only shown with one page, rather than 2 or 3 pages. It is not clear that the rest pages of the two fax documents of the petition are missed or not by PTO.

Now the petition has been made some amendment in English and is going to fax to PTO again with 3 pages plus a cover page. Therefore, please replace all three documents of the petition previously faxed to PTO with this one.